

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

**ANGEL DAVID MORALES
VALLELLANES,
Plaintiff,**

v.

**JOHN POTTER, UNITED STATES
POSTMASTER GENERAL, ET ALS.,
Defendants.**

CIVIL NO. 97-2459 (JAG)

**DAMAGES BASED ON
RETALIATION AND
DISCRIMINATION; PROHIBITED
PERSONNEL PRACTICES;
UNFAIR LABOR PRACTICES;
BREACH OF COLLECTIVE
BARGAINING AGREEMENT**

**TRIAL BY JURY IS HEREBY
REQUESTED**

**REPLY TO DEDEFENDANT'S OPPOSITION TO
PLAINTIFF'S URGENT MOTION TO TAKE A DEPOSITION**

COMES NOW, plaintiff Angel David Morales-Vallellanes through his legal counsel and very respectfully inform this Honorable Court:

1. At 3:31 p.m. today, barely eighteen 18:00 hours before the taking of deposition of former EEO Counselor Carmen Rosa, defendant USPS confirms to this Honorable Court Plaintiff's allegation of the withdrawal from its witness' list said witness (Carmen Rosa).
2. As part of its basis for the withdrawal decision defendant USPS, after five (5) years of including said witness, "became aware that she was the EEOC Counselor at the agency level". Said witness is a postal service employee assigned at that time to the USPS EEO office, she was not a member of the **EEOC** (as of today she holds the USPS Personnel Manager position).

3. A last minute plethora of cases are included in defendant USPS motion to assert the fact that said witness “lacks any involvement or personal knowledge of the facts alleged at plaintiff’s complaint.” and that she (Carmen Rosa) “is covered by the deliberative process privilege”.
4. As Plaintiff stated in his last motion it is very suspicious that Frank Girau who was also an USPS EEO Counselor for Plaintiff is not included in the withdrawal. Certainly, it is a selective withdrawal with the only purpose to obstruct Plaintiff discovery rights.
5. The action made by defendant to withdraw a witness just hours before the taking of deposition in order to raise the case of U.S. Ex Rel. Touhy vs. Ragen, 340 U.S. 462 (1951) is clearly in bad faith.
6. This Honorable Court should not allow defendant USPS that kind of litigation which is not only a temerity action but also a mockery to the dignity of this Honorable Court.

WHEREFORE, it is respectfully requested from this Honorable Court to DENY defendant’s USPS opposition and order said party to provide former EEO Carmen Rosa to taking of deposition as scheduled.

RESPECTFULLY SUBMITTED.

I HEREBY CERTIFY that on April 13, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: **Fidel A. Sevillano-Del Río, Esq.**, Assistant U.S. Attorney, Federico Degetau Federal Build., 150 Carlos Chardón Av., Hato Rey, Puerto Rico 00918.

S/MIGUEL E. MIRANDA-GUTIERREZ
MIGUEL E. MIRANDA-GUTIERREZ, ESQ.
ATTORNEY FOR PLAINTIFF
PMB 132, 500 Muñoz Rivera Local 15,
San Juan, Puerto Rico 00918-3349
TEL: (787) 282-0022

FAX: (787) 751-0883